GOOI HOCK SENG

v.

CHUAH GUAT KHIM

SUPREME COURT, KUALA LUMPUR
ABDUL MALEK AHMAD FCJ
[CIVIL APPEAL NO: 02-403-1993]
21 JUNE 2000

CIVIL PROCEDURE: *Costs - Interest on costs - Whether payable - Principles applicable - Rules of the High Court 1980, O. 42 r. 12 - Review of taxing officer's award*

The plaintiff in the court below had applied to the judge to review the registrar's certificate under O. 59 r. 36 of the Rules of the High Court 1980 ('RHC') in respect of three items, namely, (a) RM5,000 awarded for getting-up; (b) interest on costs; and (c) attendance at the taxation proceedings to complete the bill of costs, to produce vouchers for disbursements and to obtain the registrar's certificate where the registrar had awarded RM50.

As regards interest on costs, the registrar held that counsel for the plaintiff had not impressed her that the order for costs was a judgment debt under O. 42 r. 12 of the RHC, and therefore the application for interest on costs could not be made at the taxation proceedings as no costs were awarded at that stage, and that she was not bound by any other award of taxed costs.

Held:
Per Abdul Malek Ahmad FCJ

[1] In practice the court will only interfere with the exercise of the taxing officer's discretion if it is clear that he has gone wrong in principle; and for that reason, matters of quantum only, where no principle is involved, are rarely interfered with; but where a question of principle is involved and if it can be shown that the taxing officer has erred in principle, the court will exercise its own discretion.

[1a] On the award for getting-up and attendance at the taxation proceedings, the plaintiff's application was rightly dismissed.

[2] Interest is payable where an order directs payment of costs to be taxed, and a judgment for damages to be assessed or for costs to be taxed carries interest from the date of entry of judgment and not from the date of assessment of taxation. Interest on costs therefore should have been ordered by the registrar.

[Registrar's certificate to be amended to include interests on costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Plaintif dalam mahkamah di bawah telah memohon kepada hakim untuk mengkaji sijil pendaftar di bawah A. 59 k. 36 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT') berhubung tiga perkara, iaitu, (a) RM5,000 yang diawardkan untuk penyediaan; (b) faedah atas kos; dan (c) kehadiran di prosiding penetapan untuk menyiapkan bil kos, untuk mengemukakan baucer bagi pembayaran dan untuk mendapatkan sijil pendaftar di mana pendaftar telah mengawardkan RM50.

Berhubung faedah atas kos, pendaftar telah menyatakan bahawa peguam bagi pihak plaintif tidak dapat menunjukkan beliau bahawa perintah bagi kos adalah merupakan hutang penghakiman di bawah A. 42 r. 12 KMT dan dengan itu permohonan untuk faedah atas kos tidak boleh dibuat di prosiding penetapan kerana tiada kos diawardkan di peringkat itu, dan oleh itu beliau tidak terikat oleh mana-mana award lain bagi kos yang ditetapkan.

Diputuskan:
Oleh Abdul Malek Ahmad HMP

[1] Menurut amalan, mahkamah akan hanya menggangui pelaksanaan budibicara pegawai penetapan jika ianya jelas bahawa beliau telah salah menurut prinsip, dan oleh kerana alasan itu perkara-perkara kuantum sahaja, di mana tiada prinsip terlibat, jarang sekali diganggu, tetapi di mana persoalan prinsip terlibat dan jika ianya dapat ditunjukkan bahawa pegawai penetapan telah tersalah menurut prinsip, mahkamah akan melaksanakan budibicaranya sendiri.

[1a] Berhubung award untuk penyediaan dan kehadiran di prosiding penetapan, permohonan plaintif dengan betulnya telah ditolak.

[2] Faedah kena dibayar di mana sesuatu perintah mengarahkan pembayaran kos ditetapkan, dan penghakiman untuk gantirugi ditaksirkan atau untuk kos ditetapkan membawa faedah daripada tarikh kemasukan penghakiman dan bukan daripada tarikh taksiran penetapan. Faedah atas kos dengan itu haruslah telah diperintahkan oleh pendaftar.

[Sijil pendaftar hendaklah dipinda bagi memasukkan faedah atas kos.]

Case(s) referred to:
Coon v. Diamond Treadmond Co (1938) Ltd [1950] All ER vol 2 385 ***(foll)***
Eryen Warnink Besloten Vernootschap v. J Townsend & Sons (Hull) Ltd [1981] 125 Sol Jo 427 ***(refd)***
Gorfin v. Odhams Press Ltd [1958] 1 WLR 314 ***(foll)***
Hunt v. RM Douglas (Roofing) Ltd [1988] 3 All ER 823 ***(refd)***
K v. K [1977] 1 All ER 576 ***(refd)***
Landowners' West of England and South Wales Land Drainage and Inclosure Co v. Ashford [1884] 33 WR 41 ***(refd)***
Liau Kim Lian v. Bajuria [1971] 1 MLJ 276 ***(foll)***
Pang Kok v. Leong Fock Hap & Anor [1997] 1 CLJ Supp 232 ***(refd)***
Property and Reversionary Investment Corporation v. Secretary of State for the Environment [1975] 2 All ER QBD 436 ***(refd)***
Pyman & Co v. Burt and Bolton [1884] WN 100 ***(refd)***
Sam Hock Ming v. Hong Leong Assurance Sdn Bhd (Civil Suit No: 23-113-86) ***(foll)***
Welltrade & Middle & Middle East Ltd & Anor v. PJ Wakelin & Ors [1984] 1 MLJ 64 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 40 r. 11(2), O. 42 r. 12, O. 59 rr. 1(2), 34, 36

Other source(s) referred to:
Halsbury's Laws of England, vol 37, p 581, para 753
Malaysian Court Practice (High Court), vol 1, p 3941

For the plaintiff - Brijnandan Singh Bhar; M/s Brijnandan Singh Bhar & Co
For the defendant - Bala Mahesan; M/s Bala Mahesan & Khairuddin

[Appeal from High Court, Pulau Pinang; Civil Suit No: 25-179-1982]

Reported by Mariette Peters-Goh

JUDGMENT

Abdul Malek Ahmad FCJ:

By summons in chambers dated and filed on 9 October 1998, the appellant/respondent, who was the plaintiff in the court below, had applied to the judge to review the learned registrar's certificate under O. 59 r. 36 of the Rules of the High Court 1980 (hereinafter "the Rules") as regards three items therein, namely item 46 at p. 8 where RM5,000 was awarded for getting up, interest on costs, and item 92 at p. 14 as regards attendance at the taxation proceedings to complete the bill of costs, to produce vouchers for disbursements and to obtain the learned registrar's certificate, where the registrar had awarded RM50.

The appeal was set down for hearing before the Federal Court on 12 February 1992 but the appellant had withdrawn the appeal on that date in open court whereupon the appeal was dismissed with costs and the deposit refunded.

The taxation proceedings went before the registrar on 10 April 1998 where the costs awarded were RM7,124.82 including allocatur fees totalling RM533.32. The getting up costs applied were RM35,000 but only RM5,000 was awarded. The applicant/respondent had applied to the learned registrar to review her decision on the same items applied for here pursuant to O. 59 r. 34 of the Rules but this was dismissed on 2 October 1998.

On the getting up costs, the learned registrar stated her reasons for the decision as follows:

(a) the amount awarded was fair and reasonable taking into consideration that the appeal was in respect of a civil action for a road accident where the judgment was in the region of RM61,000;

(b) the appeal had been withdrawn and so there were no arguments in open court. However, the learned registrar took into account the fact that learned counsel had prepared the case;

(c) as for the RM5,000 awarded, the learned registrar had based her assessment pursuant to O. 59 r. 1(2) of the Rules. The learned registrar was of the view that the amount awarded was appropriate, fair and reasonable relying on the principles expounded in *Weiltrade & Middle East Ltd & Anor. v. P.J. Wakelin & Ors* [1984] 1 MLJ lxiv;

(d) she had also adhered to the principles and guidelines enunciated in *Pang Kok v. Leong Fock Hap and Anor*. [1997] 1 CLJ Supp 232 where it was said that for the purpose of taxation of costs, running down actions could be considered to be the simplest of cases;

(e) reliance was also placed on *Property and Reversionary Investment Corporation v. Secretary of State for the Environment* [1975] 2 All ER QBD 436 which held that the taxing master should ascertain the getting up costs based on complexity, skill, time, documents, place and circumstances, value, importance and other factors.

As for the attendance at the taxation proceedings to complete the bill of costs, to produce vouchers for disbursements and to obtain the learned registrar's certificate, the learned registrar explained, when stating her reasons for the decision, that the minimum provided under item 37 of the scale of costs is RM30 and the maximum RM120 and accordingly, she considered RM50 to be fair, reasonable and appropriate.

In *Coon v. Diamond Tread Co. (1938) Ltd.* [1950] All ER vol. 2 385, on an inquiry as to damages, an official referee awarded the plaintiff a sum of 10,541 pounds Sterling, together with costs which he directed should be taxed. A bill of costs brought in by the plaintiff was reduced by the taxing master in respect of sums included in the bill in respect of the items "instructions for brief," fees and refreshers to leading and junior counsel, and fees of accountants whose services the plaintiff had used at the inquiry. The plaintiff objected to the reductions on the grounds that the fees allowed were inadequate, and asked for the decision of the taxing master to be reviewed.

It was held that as the complaint went to quantum only, it had not been shown that the taxing master had erred on a question of principles and therefore the court had no jurisdiction to interfere with his decision.

At p. 387 of the judgment, Wynn-Parry, J said:

> The law to be applied in such a case as this is conveniently stated by the Court of Appeal in *Re Ogilvie* [1910] P. 243. In the course of his judgment Cozens-Hardy, MR, said [1910] P. 244):
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> > It is of extreme importance that there should be no doubt as to the general rule on this subject.
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> He then quoted with approval from the judgment of Sir John Leach, MR, in *Alsop v. Oxford (Lord)* [1833] 1 My. & K. 564, where Sir John Leach, MR, said (1 My. & K. 566):
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> > Generally speaking, the decision of the master on taxation is final: he is the sole judge of the fact, whether the business has been done, and of the proper charge to be made for it; and it is further his duty to inquire whether the business was required to be done; for, if the solicitor negligently or ignorantly takes any unnecessary proceedings, it is the duty of the master to protect the client from any charge in respect of such proceedings. The court will only interfere where the master acts upon some mistaken principle.
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> After referring to the later case of *Re Catlin* [1854], 18 Beav. 508, Cozens-Hardy, M.R., continued ([1910] P. 244):
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> > I should be very sorry if any doubt were cast on that, for I can scarcely imagine a tribunal more unfit than a judge of the High Court to deal with questions of *quantum* on the taxation of costs. The taxing master is the person whose duty it is to decide questions of *quantum*, and it is not right for the judge to interfere in such a matter. If a question of principle arises, no doubt the court ought to interfere and consider and if necessary correct the view taken by the taxing master.

Buckley, LJ, said (*ibid.*, 245):

> On questions of *quantum* the decision of the taxing master is generally speaking final. It must be a very exceptional case in which the court will even listen to an application to review his decision. In questions of *quantum* the judge is not nearly as competent as the taxing master to say what is the proper amount to be allowed; the court will not interfere unless the taxing master is shown to have gone wholly wrong. If a question of principle is involved it is different; on a mere question of *quantum* in the absence of particular circumstances the decision of the taxing master is conclusive.

In *Gorfin v. Odhams Press Ltd.* [1958] 1 WLR 314, it was held that notwithstanding the terms of the relevant provision to review, in practice the court will only interfere with the exercise of the taxing officer's discretion if it is clear that he has gone wrong in principle, and for that reason matters of quantum only, where no principle is involved, are rarely interfered with, but where a question of principle is involved and if it can be shown that the taxing officer has erred in principle, the court would exercise its own discretion.

At p. 3941 of the Malaysian Court Practice High Court vol. 1 as to when a review under O. 59 r. 36 of the Rules will be ordered, it is stated:

> The phrase 'as the circumstances require' in r. 36(5) confers on the judge a discretion which is to be judicially exercised. The judge should not interfere with the registrar's decision unless there is an error of principle or some other material error and for this purpose, a broad overview of the matter should be taken. Hence, the hearing before the judge is not a rehearing but is a review: *Diversey (Far East) Pte Ltd v. Chai Chung Ching Chester & Ors (no. 2)* [1993] 1 SLR 542.
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> The court will not interfere with the decision of the taxing registrar upon a mere question of quantum if the taxing registrar has exercised his discretion after consideration of all the circumstances and if no question of principle arises. It is only when the taxing registrar's decision has been exercised on some wrong principle or the quantum allowed is obviously wrong that the judge will interfere: *Starlite Ceramic Industry Ltd v. Hiap Huat Pottery* [1973] 1 MLJ 146.
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> The judge should not interfere unless there is an error of principle or some other material error: *Diversey (Far East) Pte Ltd v. Chester Chei Chung Ching & Ors. (No 2)* above, or unless the registrar has made an obvious mistake, or has exercised his discretion capriciously or mischievously: *Corbett v. Ipoh Tin Dredging Ltd* [1936] MLJ 278.

On these considerations, I was of the view that for the first and third items, the application ought to be dismissed and I so ordered.

However, as for the second item, which was the interest on costs, the learned registrar had said that learned counsel for the applicant/respondent had not impressed her that the order of costs was a judgment debt under O. 42 r. 12 of the Rules, that the application for interest on costs cannot be made at the taxation proceedings as no costs are awarded at that stage, and that she was not bound by any other award of taxed costs.

In *Halsbury's Laws of England* vol 37 at p. 581 para. 753 reads:

> Notwithstanding that orders for costs have the same effect as judgments and that judgment debts carry interest from the date of entering up the judgment, the modern practice, based on the principle that interest cannot run until payment is wrongfully withheld and that payment cannot be wrongfully withheld until a party knows what he has to pay, is that interest on costs runs from the date of the taxing officer's certificate quantifying the costs or from such other date as may be ordered as the date on which payment is to be made.

In *Liau Kim Lian v. Bajuria* [1971] 1 MLJ 276, the Federal Court had ruled that upon a true construction of O. 40 r. 11(2) of the Rules, interest is payable where an order directs payment of costs to be taxed, and a judgment for damages to be assessed, or for costs to be taxed, carries interest from the date of entry of judgment and not from the date of assessment or taxation.

This was followed by the High Court in *Sam Hock Ming v. Hong Leong Assurance Sdn Bhd* Civil Suit No. 23-113-86 High Court Ipoh which held that as to whether interest should run from the date when an order for costs was made or from the date of allocatur in respect of such costs, the court took the view that a judgment for damages to be assessed or for costs to be taxed, carried interest from the date of the said judgment and not from the date of assessment of damages or taxation of costs.

As stated in footnote 5 of the Halsbury's text referred earlier, *Pyman & Co v. Burt and Bolton* [1884] WN 100 and *Landowners' West of England and South Wales Land Drainage and Inclosure Co v. Ashford* [1884] 33 WR 41, were overruled by *K v. K* [1977] Fam 39, [1977] 1 All ER 576 CA and *Eryen Warnink Besloten Vernootschap v. J. Townsend & Sons (Hull) Ltd* [1981] 125 Sol Jo 427 but these in turn have now been overruled by *Hunt v. RM Douglas (Roofing) Ltd* [1988] 3 All ER 823 which held that a litigant who has been awarded costs is entitled to interest on those costs from the date of judgment rather than the date the taxation of costs is completed.

It is my considered opinion that interest on costs should have been ordered by the learned registrar and I now order that the learned registrar's certificate be amended to include a new item 99 to read as follows:

> 99. Interest on costs at 8 per cent per annum from the date of judgment of the appeal in the Federal Court on 17th April 1993 till the date of realisation.